

R865. Tax Commission, Auditing.

R865-14W. Mineral Producers' Withholding Tax.

R865-14W-1. Mineral Production Tax Withholding Pursuant to Utah Code Ann. Sections 59-6-101 through 59-6-104.

(1) Definitions.

(a) "Working interest owner" means any person who is the owner of an interest in oil, gas, other hydrocarbon substances, or all other metalliferous and nonmetalliferous minerals who is burdened with a share of the expense of developing and operating the property.

(b) "First purchaser" means the first person to pay for production after it is extracted from deposits in this state.

(c) "Person" means any natural person, company, corporation, association, partnership, joint venture, cooperative, estate, trust, receiver, or any other party or entity that has a working interest, royalty interest, overriding royalty interest, production payment, production payment including in-kind exchanges, or any other ownership interest entitled to production proceeds from deposits in this state.

(d) "Producer" as defined in Section 59-6-101 includes any non-operating working interest owner that makes payments to persons having an interest in minerals produced or extracted from deposits in this state.

(2) Advance mineral production payments that relate to, refer to, or concern production are subject to the mineral production tax withholding requirements.

(3) Each producer who disburses funds that are owed to any person owning a working interest, a royalty interest, overriding royalty interest, production payment or any other interest in minerals produced in this state, is subject to the withholding requirement of Section 59-6-102.

(4) Withholding requirements on further distributions are as follows:

(a) Unless otherwise provided by statute, each producer who disburses funds to any producer, working interest owner or any other interest owner must withhold five percent of the gross payment due if that producer or any other interest owner does not make further distributions. For producers or any other interest owners making further distributions, the procedures outlined in Subsection (4)(b) must be followed.

(b) The working interest owner or producer who makes further distributions must be licensed to withhold on the disbursements and is responsible for remitting the tax withheld each quarter. Upon approval by the Auditing Division of the Tax Commission, a working interest owner or producer who makes further distributions of the mineral production proceeds

may furnish an exemption certificate approved by the Tax Commission to the producer or first purchaser.

(c) If an exemption certificate approved by the Auditing Division of the Tax Commission is not received, withholding is required.

(5) If a mineral is taken in kind by an interest owner of a mineral production property, the initial withholding responsibility rests with the first purchaser who receives the mineral. A person taking a mineral under an exchange agreement with the interest owner is considered to be the first purchaser and is subject to the requirement of withholding and remitting the tax on any payments made to the interest owner.

(6) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit must be claimed for the tax withheld on a Utah individual income tax return or a Utah corporation franchise tax return, with a copy of Form TC-675R attached to substantiate the amount claimed.

(b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the Internal Revenue Code and are Utah residents, members of a Utah limited liability company, or members of a partnership doing business in this state must attach a copy of federal form K-1 to their Utah individual income tax return. They may claim credit for the amount shown as their percentage share of the tax withheld from Utah mineral production payments by the corporation, limited liability company, or partnership.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of federal distributable net income. The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. To claim the credit, the beneficiaries must attach a copy of federal form K-1 to their Utah individual income tax return and claim credit for the amount shown by the fiduciary as their percentage share of the tax withheld from Utah mineral production payments.

(d) A corporation or individual taxpayer filing on a fiscal year ending other than December 31, must claim a credit for the withholding tax shown on Form TC-675R on the corporation franchise or individual income tax return required to be filed during the year following the December closing period of the Form TC-675R.

(7) The return prescribed by the Tax Commission for reporting the information specified in Section 59-6-103 may be obtained from the Tax Commission. These forms are to be completed and filed in accordance with instructions provided by the Tax Commission. They are as follows:

(a) Form TC-96Q, Utah Employer's Quarterly Income Withholding Return, must be filed quarterly. Negative payments may not be reported on Form TC-96Q. Utah Employer's Amended Income Withholding Return, TC-96A, must be filed in cases where tax was withheld in error and adjustments to the current period create negative amounts. Adjustments are not allowed between calendar years. All adjustments on quarterly returns must be for the current calendar year. Amended returns must be filed for prior years adjustments.

(b) Form TC-96R, Utah Employer's Mineral Production Withholding Reconciliation Return must be filed annually with a copy of each Form TC-675R attached.

(c) Form TC-96A, Utah Amended Mineral Production Withholding Return, must be filed when adjustments are not for the current calendar year or when adjustments in the current calendar year would create negative amounts.

(d) Form TC-675R, Statement of Utah Tax Withheld on Mineral Production shall be furnished to each person who is entitled to credit for taxes withheld each calendar year. If a working interest owner or royalty owner receives payments on more than one well or property from the same producer, the production payment amount and mineral production withholding tax amount may be grouped on Form TC-675R. Negative payments will not be accepted on Form TC-675R.

(8) If the producer, operator, or first purchaser fails to withhold the tax required under Section 59-6-102, and thereafter, the income subject to withholding is reported, and the resulting tax is paid by the recipient, any tax required to be withheld shall not be collected from the producer, operator, or first purchaser. However, the producer, operator, or first purchaser shall remain subject to penalties and interest on the total amount of taxes that should have been withheld.

KEY: taxation, mineral resources, withholding tax

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